

We currently support a wide range of specialized products and assistive technologies for customers with disabilities. Products available through the State of California's Deaf and Disabled Trust Program, which is administered by Pacific Bell and others, are shown in Table 1, and several network services used by individuals with different types of disabilities are shown in Table 2:

<b>Table 1: Examples of Commonly Used Specialized CPE Provided by the Deaf and Disabled Telecommunications Program for Loan to Californians with Disabilities</b>		
<b>Product</b>	<b>Access Features</b>	<b>Who Benefits</b>
TTY (text telephone, TDD, <i>etc.</i> )	provides two way text based communication	people who are deaf, with hearing loss, or speech disabilities
Big Button Telephones	enlarged keys and key pad	people with low vision or mobility/fine motor issues
Amplified Phones and Adjuncts	allows user to increase or modify output volume	people with hearing loss or people in noisy environments
Hands-Free Telephones	allows user to interact with telephone services, receive assistance with dialing, <i>etc.</i>	people with severe mobility/motor coordination issues
Voice Amplifiers and Artificial Larynxes	allows user to use speech by amplifying or providing vocal sound	people with speech impairments

<b>Table 2: Examples of Pacific Bell and Nevada Bell Services Meeting the Needs of People with Disabilities</b>		
<b>Service</b>	<b>Access Features</b>	<b>Who Benefits</b>
Speed Calling	reduces number of inputs	people with limited mobility/fine motor coordination, people with cognitive disabilities, children
Three Way Calling	allows "interpreter" or notetaker at a remote site to participate in calls -- customers with disabilities choose who will provide assistance	people with nonstandard speech, people who do not speak a specific language, people who are unable to write or write quickly due to a disability (people with arthritis, cerebral palsy, <i>etc.</i> )
Message Center/Voice Mail	allows users to send copied messages, forward messages, save personal audio notes at remote locations	people who fatigue easily due to permanent or temporary health conditions, people with cognitive issues, mobility or visual impairments
Call Return Call Waiting	reduces number of inputs	people with limited mobility/motor coordination, people with cognitive disabilities
Call Forwarding Select Call Forwarding	increases mobility while maintaining accessibility to all or some callers -- important for receiving calls from personal care attendants, health care providers, <i>etc.</i>	people with health or personal care concerns

We note, however, that determining compatibility with forms of assistive technology or medical devices which do not have compatibility standards (*e.g.*, hearing aids, screen readers)

has been extremely difficult and costly. In addition, the types and severity of disabilities, the individual accommodation preferences, and cultural and age-related issues also make it extremely difficult to determine optimal access solutions. One potential solution, which we continue to advocate, is to identify and reduce or eliminate potential barriers through process-oriented techniques like Universal Design, with input from disability groups.

#### **IV. THE EXISTING COMPLAINT PROCEDURES, WITH MINOR MODIFICATIONS, PROVIDE A SUITABLE VEHICLE FOR ENFORCING SECTION 255**

We believe that compliance with Section 255 should be accomplished by providing continuing guidelines for service providers and manufacturers, developing process-oriented documentation requirements, and extending the existing complaint procedures under Section 207 and Section 208 of the Act to complaints under Section 255. As discussed below, based on the rapidity of change in the telecommunications environment, static rules and requirements will not ensure that the goals of Section 255 are met. Instead, we encourage the Commission to continue to work in conjunction with the Access Board to develop guidelines, updated on a regular basis, that define the responsibilities of manufacturers and service providers with respect to Section 255. We also believe that, because of changing conditions, a case-by-case approach to access issues is compelled, which dictates some minor changes to the complaint procedures to ensure fair and workable treatment of disputes. Our proposed model for compliance is briefly set forth below.

**A. The FCC Should Work In Conjunction with Manufacturers, Service Providers, and the Access Board To Develop Continuing Guidelines for Compliance with Section 255 Policies**

"Telecommunications access for people with disabilities" is still being defined and it is likely that any definition ultimately adopted will need to change with technology. Resolution of complaints will thus, by necessity, need to proceed on a case-by-case basis. Nonetheless, it is critical for the Commission, with the assistance of the TAAC, to clarify the responsibilities of manufacturers and service providers, especially where equipment and services issues overlap or converge. The establishment of initial guidelines serves as a baseline for companies to begin tackling complex access issues and will be of invaluable assistance to smaller companies in achieving compliance with Section 255. In this regard, we believe the key requirements of our Universal Design principles, outlined in Section I(A), could be useful.

A policy or guideline statement will be essential to clarify responsibilities and roles of service providers and equipment manufacturers in identifying and implementing solutions to accessibility and use problems. At the same time, hard and fast rules will not be practical, as technology in the telecommunications arena is changing too quickly. Service specific rules on a disability-by-disability basis could, in fact, lead to stagnation. In effect, we believe it is impossible to develop regulations, other than those that are process oriented, without the risk of limiting how accessibility may develop in the future. We also oppose any implementation of interim rules, guidelines, or procedures pending issuance of the Access Board's recommendations. Any interim policies could easily be contradicted by the TAAC, resulting

in confusion and stranded investment by companies attempting to comply with Section 255 in good faith.

One area in particular where specific guidelines are necessary is in differentiating the respective roles of service providers and manufacturers in providing access. Again, we do not believe that it is advisable to design definite rules regarding the apportionment of liability, other than recognizing that the liability may be apportioned between manufacturers and service providers depending upon the specific circumstances involved. We also strongly support joint efforts by equipment manufacturers, service providers, and consumers with disabilities to work on accessibility issues. Nonetheless, in certain instances, accessibility will be a function of how CPE is manufactured and the service provider should not be held liable for a product that it does not control.<sup>13</sup>

The Access Board should have an important, continuing role in the issuance of guidelines under Section 255. Telecommunications products and services change rapidly and guidelines that are appropriate today may not be appropriate tomorrow -- technology, for example, may have rendered a solution that was previously prohibitively expensive into an upgrade that is eminently reasonably priced. Accordingly, we suggest that the Access Board review and update the process guidelines every five years and, in addition, issue annual reports reviewing the "state of the industry" with respect to access and use issues. Indeed, such an annual report could serve to highlight best practices within the industry and identify

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<sup>13</sup>In this connection, the Commission has also requested comment on the circumstances in which a defense to a complaint against a provider of telecommunications services is that accessibility could be, or could have been, achieved through the design of equipment and vice-versa. It is our belief that the specific facts of each case must be examined.

companies or organizations that are finding innovative technological and process-oriented solutions to access problems.

**B. The Commission Should Encourage a Process-Oriented, Self-Certification Approach To Section 255 Compliance Issues**

We also believe that it would be beneficial, as previously noted, to encourage manufacturers and service providers to provide more information on compliance with Section 255 goals through Declarations of Conformity ("DOCs") and Consumer Accessibility Impact Reports ("CAIRs") when introducing new products and services. The Commission pioneered the use of DOCs in its rulemaking to relax the burdens associated with Part 15 equipment authorization requirements. In effect, under the equipment authorization rules, manufacturers "self-certify" by including a DOC with equipment sold. The DOC: (i) identifies the product; (ii) states that the product complies with Part 15 of the Commission's rules; (iii) identifies the product's test report by date and number; and, (iv) identifies by name, address, and telephone number the party responsible for compliance of the product. We believe that a similar DOC could easily be created for self-certification of compliance with Section 255 by requiring a statement that the product or service complies with the Commission's guidelines on accessibility and a statement that identifies the appropriate CAIR.

The CAIR, in turn, would be a document retained in the manufacturer's or service provider's files that would be made available to the general public upon request. The CAIR would describe the features providing access for people with functional limitations, possibly along product lines, including pricing considerations. The CAIR would also document

compatibility with commonly used CPE and assistive technologies. Last, if a device or service does not provide, or provides only partial, access for particular classes of individuals with disabilities, the CAIR would state with particularity what measures were considered and why such measures were not considered "readily achievable."<sup>14</sup>

By encouraging the preparation of DOCs and CAIRs for Section 255, the Commission would promote the flow of information related to access issues. This would, as we have previously observed, provide a "paper trail" allowing interested parties to determine where, if anywhere, a particular access mode or feature should have been considered, or why such a mode was rejected as "not readily achievable." This documentation would facilitate the resolution of complaints, be useful in apportioning responsibility among parties, and generally promote a greater awareness of access issues.

**C. The Existing Complaint Procedures Should Be Modified To Allow for Case-By-Case Resolution of Access Issues**

As previously noted, the complex, changing environment of telecommunications and the advances both in assistive devices and other technologies virtually dictates a case-by-case approach to resolving Section 255 issues. While we acknowledge the important role that continuing guidelines can play in this process, ultimately many access and use issues will be

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<sup>14</sup>The Commission's rules in this regard should be flexible enough to allow individual companies to resolve, on their own, the tension between disclosing competitively sensitive information and the need to provide detailed facts supporting a determination that a product or service is not "readily achievable." We note, however, that there is a strong incentive for manufacturers and service providers to be as specific and detailed as possible to avoid complaints from the start.

resolved through consumers making an effort to educate telecommunications manufacturers and service providers about their needs. While we hope that this process can, in large part, be undertaken informally through company contacts listed in DOCs and that companies will be responsive to informal requests, issues about what constitutes "readily achievable" measures and other factors will inevitably arise. In order to assure that Section 207 and Section 208 complaints are resolved expeditiously, uniformly, and -- from a network and equipment perspective -- efficiently, we urge the FCC to adopt a few minor modifications to the procedures for Section 255 complaints and to apply these modifications to access and usage complaints under Sections 207 and 208.

First, it is our belief that, after the filing of either a formal or informal complaint under Sections 207, 208, or 255, the Commission should continue its long history of encouraging settlements between the parties. Assuming that one or both of the parties is unsatisfied with the results of direct discussions, we believe that the complaint should be forwarded to an interindustry and consumer access forum. While an individual complainant would be free to continue to pursue its remedies at the FCC, an access forum may have more flexibility to address systemic issues by notifying the industry of industry-wide problems, convening a task force, issuing industry alerts, or referring problems to a mediator or back to the FCC with recommendations if the issue is company-specific.

Second, we believe that the complaint procedures under Section 255 relating to manufacturers should be structured to parallel the process and procedures employed under Section 207 and Section 208. As the Commission has noted, Section 255 does not appear to extend the Commission's jurisdiction under its existing complaint procedures to encompass



manufacturers and, thus, separate procedures appear to be necessary to address accessibility and use complaints implicating manufacturing issues under Section 255. Due to the potential for overlap between manufacturer and service provider issues, however, it would be exceedingly beneficial to have parallel processes and procedures that would allow manufacturers or service providers to be joined in a single complaint to facilitate resolution of issues in the most efficient and most expeditious manner. Accordingly, we believe that a unified complaint process should be defined that allows complaints to be filed under Section 207, Section 208, or Section 255.

Third, Pacific believes it would be appropriate to provide some incentive to encourage the preparation of DOCs and CAIRs that provide specific details on compliance measures. When a manufacturer or service provider has made a good faith effort to comply with the policies of Section 255, for example, the Commission could establish a presumption of compliance with Section 255 rebuttable only with evidence that a specific access or use issue was not considered or that a particular technical measure that would have provided access or use is "readily achievable." Good faith compliance with Section 255, for purposes of establishing a presumption, could be evidenced by a DOC and CAIR that provides necessary documentation describing the access measures considered and, if particular access measures are not supported, documentation providing the basis for a manufacturer or service provider's conclusion that such measures are not "readily achievable." These disclosures should provide complaining parties with a sufficient basis for offering specific evidence in response that a statement in the CAIR is faulty or that the CAIR fails to consider a potential solution.

Moreover, the process we have described would allow rapid narrowing of the issues in a complaint under Section 255.

Thus, with only minor changes, we believe that a workable structure for resolving complaints can be created in the existing context of procedures and policies developed for Sections 207 and 208. Our suggestions build in the potential for resolving issues that will, inevitably, cut across industries and implicate more than one service provider or manufacturer or that may apply to more than one disability. In effect, the access forum approach continues the Commission's commitment to informal resolution of complaints while, at the same time, allowing the flexibility to cut to the core of access and use issues and identify solutions that will endure. At the same time, a rebuttable presumption of compliance for good faith efforts to comply with Section 255 policies, as demonstrated by the DOC and CAIR, will ensure expeditious resolution of those remaining complaints that must be addressed by the Commission.

## **V. CONCLUSION**

In conclusion, we believe the policies outlined above will best fulfill Congress's and the Commission's goals set forth in Section 255. Our proposals balance the flexibility needed in the fast-moving telecommunications environment with the regulatory certainty necessary for companies to make informed decisions. We therefore encourage the Commission to adopt the


flexible, evolutionary, and process-oriented compliance framework set forth above and thereby ensure that all Americans have a choice of products and services that fully meet all of their communications needs.

Respectfully submitted,

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